RECENT CASES.

ADMINISTRATOR DE BONIS NON — RETAINER BY REPRESENTATIVE OF DECEASED ADMINISTRATOR. — An administrator *de bonis non*, with the will annexed, died before the estate was settled, and the administrator of his estate took possession of certain bonds that had belonged to the original testator. The new administrator *de bonis non* on his appointment brought a suit in equity, under a statute supplementing replevin, for the delivery of these bonds. *Held*, that he could not recover *all* of them, for until the former administrator's account was settled in the probate court, his administrator had a right to hold part of the assets of the estate as security for whatever sums should be found due him. Field, C. J., and Knowlton and Barker, JJ., dissent. *Foster* v. *Bailey*, 31 N. E. Rep. 771 (Mass.).

The decision of the court is based on the idea that although the second administrator *de bonis non* took title to these chattels, still it was subject to all existing liens and incumbrances, and that the right of the first administrator to retain goods to reimburse himself for expenditures attached, like a lien, and prevented the second administrator from taking a clear title.

It is submitted that this decision is virtually a piece of judicial legislation. An executor or administrator gets the full title to chattels subject to a legal duty of disposing of them for the benefit of the legatees or next of kin. The exercise of the right of retainer serves merely to divest the chattels of this interest of the legatees or next of kin, and thus makes the executor's or administrator's title absolute; and an election to retain any specific goods is an administration of them. The court does not deny that these bonds were unadministered, but holds that the right of retainer, which was not exercised by the first administrator, could be made use of by his representative. But on the death of the first administrator the title in these unadministered chattels at once vested in the new administrator *de bonis non*, and any attempt by the representative of the first administrator to dispose of them would have been a conversion. Moreover, since the title was elsewhere, he could not by mere act of his own put absolute ownership in himself; the greatest possible right he could have would be to retain possession as on a bailment. Under this decision, if the probate court found that the estate was indebted to him, he could not sell these chattels as his own and keep the proceeds; at most, he could hold them as a pledge of payment by the new administrator *de bonis non*. This is not a right ever possessed by the former administrator, but a substitute for his rights, invented by the court.

AGENCY — AGENT FOR BOTH PARTIES — FIRE INSURANCE. — Plaintiff applied to B, insurance agent for several companies, for a specified amount of insurance on two docks of lumber. He did not mention the particular companies or the rate. B said he would issue policies at once; he signed but did not deliver them for several days. Meantime the lumber was burned. The policies aggregated a smaller sum than that applied for. *Held*, that there was a valid contract with each company in which a policy was issued, as the agent acted for plaintiff in choosing the companies and distributing the risk. Grant, J., dissented, on the ground that there was no meeting of minds. *Mich. Pipe Co.* v. *Mich. Fire etc. Ins. Co.*, 52 N. W. Rep. 1070 (Mich.).

AGENCY — NEGLIGENCE OF VICE-PRINCIPAL. — The foreman of an extra gang of track-repairers, whose sole duty it is to supervise the work of track-repairing over eighteen or twenty miles of the road-bed of a railroad company, to hire the men necessary to do that work, and to direct the operations of the force so employed, is a vice-principal for whose negligence the railroad company is liable when a workman in said gang was injured while under his orders. *Northern Pac. R. Co.* v. *Peterson*, 51 Fed. Rep. 182 (Minn.), C. Ct. of Appeal.

This case shows the tendency of the American courts to adopt the vice-principal doctrine, and thus to interpret the harsh rule of common employment more liberally in the workman's favor.

Railway Co. v. *Ross*, 112 U. S. 377, is cited. Thayer, J., concludes from that case that the test for determining whether a person occupies the relation of a vice-principal or a fellow servant "is not whether the person has charge of an important department of the master's service, but whether his duties are exclusively those of supervision, direction, and control over a work undertaken by the master, and over subordinate employees engaged in such work, whose duty it is to obey, and whether he has been vested by the common master with such employment of supervision and management."

BILLS AND NOTES — BONA FIDE HOLDER. — Defendant gave to M her signature on a blank paper to enable M to draw an order upon a bank for purposes of defendant's business. M fraudulently wrote over the signature a promissory note to himself as payee. Plaintiff indorsed the note for M's accommodation, and at maturity had to take it up. Plaintiff was ignorant of M's fraud. *Held*, that plaintiff could enforce the note. *Breckenridge* v. *Lewis*, 24 Atl. Rep. 864 (Me.).

The court says that defendant gave to M apparent authority to use her signature as he did, and that as she made the fraud possible, the loss should fall on her rather than on an innocent third party. This decision follows the distinction taken in 1 Daniell, Negot. Instruments, § 843 and § 845, between the case where an agent is intrusted with his principal's blank signature for a certain purpose, in which case the principal is liable to innocent third persons if the agent abuses his trust, and the case where a party gives his signature without intent to have it used for business purposes, when he is not liable if a note is drawn above it. The real question in these cases should be whether the defendant's conduct has been negligent when measured by the standard of care of the ordinary business man. If he has been negligent, it is submitted that he should be held, no matter whether he wrote his name for a business purpose or not.

CARRIERS — NEGLIGENCE — ACT OF GOD. — A common carrier neglected to give notice of the arrival of certain goods which, therefore, remained in the warehouse and were injured by an extraordinary freshet. *Held*, that the carrier had been guilty of negligence, and could not set up the act of God as an excuse. *Richmond R. R.* v. *White*, 15 S. E. Rep. 802 (Ga.).

This is in accord with the doctrine laid down in *Michaels* v. *R. R.*, 30 N. Y. 564, which has been followed in Missouri and Illinois. The opposite view was held in *Morrison* v. *Davis*, 20 Pa. St. 171, and accepted in the United States Supreme Court and in Massachusetts, Ohio, and Michigan.

CONSTITUTIONAL LAW — POWERS OF CONSTITUTIONAL CONVENTION — SUBMISSION OF NEW CONSTITUTION. — Where the Legislature convokes a convention for the purpose of framing a new constitution, without requiring that, when adopted, it shall be ratified by popular vote, it is not necessary to the validity of the constitution that it be so ratified. *Sproule* v. *Fredericks*, 11 So. Rep. 472 (Miss.).

It would seem that the decision is sound so far as this is a question for the courts. If the Act convoking the convention should provide for submission of the constitution to the people, in such case the courts could declare the constitution not to be in force until ratified. *Wells* v. *Bain*, 75 Penn. St. 39; *Wood's Appeal*, 75 Penn. St. 59. Mr. Jameson in his book on "Constitutional Conventions" (§ 481) says that even where the Act is silent, the constitution should be submitted. But whether he is right on this point or not, the question would seem to be one of politics, and outside the province of a judicial tribunal. The court in this case go to the extreme limit in asserting sovereign powers for a constitutional convention, calling it "a constitution-making body." For the opposite view, see Jameson, c. vi. The statements of the courts as to precedents in Mississippi are hardly true historically. The first constitution, in 1817, and the second, in 1832, were submitted, as well as the reconstruction constitution of 1868. The secession amendments in 1861 were not submitted. The custom in Mississippi would seem to favor a submission to the people.

CONSTRUCTION OF STATUTE — CUSTOMS DUTIES — BOOKS. — The Tariff Act of 1890 provides that a book must have been "printed and bound more than twenty years," to be entitled to enter free of duty. *Held*, that a set of books printed and bound more than twenty years, but rebound within that period, was nevertheless entitled to free entry, on the ground either that, having once been bound twenty years ago, the statute was complied with, or else that rebinding was not the same as binding. *In re Boston Book Co.*, 50 Fed. Rep. 914 (Mass.), C. Ct.

CORPORATIONS — ILLEGAL EXPULSION OF MEMBER — ACTION FOR DAMAGES. — There can be no action for damages arising from illegal expulsion from membership in an incorporated mutual benefit society. The only remedy is by mandamus to compel reinstatement. *Lavalle* v. *Société St. Jean Baptiste de Woonsocket*, 24 Atl. Rep. 467 (R. I.).

It is not easy to follow the reasoning which leads the court to conclude that bringing an action for damages is an admission that the expulsion was legal. A contrary decision was reached in *Ludowiski* v. *Society*, 29 Mo. App. 337, a case which seems better supported by reason and authority.

CORPORATIONS — LEASE OF FRANCHISE. — A railroad company in New Jersey leased its franchise and roads to a railway corporation of another State. The lease was expressly forbidden by law. Its effect was to combine coal producers and carriers, and partially to destroy competition in the production and sale of anthracite coal. *Held*,

that it was a corporate excess of power tending to monoply and public injury. *Held* further, that such excess of power might be restrained in equity at the suit of the attorney general. *Stockton* v. *Central R. Co.*, 24 Atl. Rep. 964 (N. J.).

The court points out that there has been some conflict of authority as to whether an injunction will issue at the instance of the attorney general to restrain every excess of corporate power, or whether, before it issues, actual threatened injury must be shown. The argument which sustains the first class of cases is that "every excess of corporate power violates the contract with government, and thereby invades public and governmental rights." See *Thomas* v. *R. Co.*, 101 U. S. 71. The argument to support the other class of cases is that "a court of equity shall not move upon a mere legal intendment, but should be satisfied of a real, substantial public injury, which demands the writ of injunction in the due protection of the public." The latter cases are preferred by the New Jersey court on the ground that if there be no present emergency, the injunction may well be reserved until final hearing.

The following cases show the difference of opinion on the point, Green's Brice's Ultra Vires (2d ed.), 708; 21 Ch. Div. 752; L. R. 18 Eq. Cas. 172; 11 Ch. Div. 449; 1 Drew & S. 154 (S. C. 6 Jur. N. S. 1006); 35 Wis. 525.

CORPORATION, MUNICIPAL — POWER TO ACT AS TRUSTEE. — The acceptance by a municipal corporation of a legacy under a void bequest does not make the corporation a trustee for the residuary legatees as to the money so received, and the Orphans' Court has no jurisdiction to compel an accounting therefor. *In re Franklin's Estate*, 24 Atl. Rep. 626 (Pa.).

For further discussion, see page 202.

EQUITY — FRAUD — REFORMATION OF DEED. — Plaintiff agreed to sell land to defendants and prepared a deed. Defendants prepared another deed, covering the first and also a second parcel of land, which they prevailed on plaintiff to sign and acknowledge by falsely representing that this deed was the same as the first deed. Plaintiff prayed to have this deed reformed to exclude the second parcel of land. *Held*, that as plaintiff knew all about the land which he sold, and as defendants occupied no fiduciary position towards him, the court would give no relief. Plaintiff was negligent and must suffer the consequences. *Rushton* v. *Hallett*, 30 Pac. Rep. 1014 (Utah).

This case seems to go too far. Even if plaintiff was negligent it is submitted that the court should not, for that reason, allow defendants to gain any advantage from their fraud.

EQUITY — HUSBAND AND WIFE — ALIMONY WITHOUT DIVORCE. — It is within the general jurisdiction of a court of equity to issue a decree for alimony at the suit of a deserted wife, although plaintiff does not apply for a divorce, and although a court of equity would have no jurisdiction to grant such an application if made. *Edgerton* v. *Edgerton*, 29 Pac. Rep. 966 (Mont.).

The rule laid down in this exhaustive judgment, though enforced by Statute in New Jersey and Illinois, and adopted by the courts in Iowa, Colorado, California, and a number of Southern States, is opposed on the whole to the weight of authority, including England, New York, and Massachusetts. See Bishop on Marriage, Divorce, and Separation, §§ 1393–1400 (1891).

EQUITY — INJUNCTION — LABOR UNIONS — INTERFERENCE WITH EMPLOYER. — An injunction may be granted to restrain labor unions and members thereof from entering upon complainant's mines, or interfering with the working thereof, or by force, threats, or intimidation preventing complainant's employees from working the mines, where the threatened acts are such that their frequent occurrence may be expected, and defendants are insolvent. *Cœur d' Alene Consolidated & Mining Co.* v. *Miners' Union of Wardner et al.*, 51 Fed. Rep. 260 (Idaho), C. Ct.

INSURANCE — RE-INSURANCE — LIABILITY OF RE-INSURING COMPANY. — *Held*, that where company A insures in company B, the liability of company B to company A is to be measured by the actual damage to the insured property and A's liability for the same, and not by what A actually pays in liquidation of that liability. *Held*, therefore, that where both company A and company B had become insolvent, the payment of a dividend on the claim of the insured against company A was not a condition precedent of a proof by the latter of their claim against company B, nor the measure of the amount of such proof. *In re Eddystone Marine Ins. Co.; Ex parte Western Ins. Co.* [1892] 2 Ch. 423 (Eng.).

INTERSTATE COMMERCE — "EQUAL FACILITIES" — PLEADING. — Section 3 of the Interstate Commerce Act provides that every common carrier shall provide equal facilities for the interchange of traffic with connecting lines, and that there shall be no

discrimination in charges between such lines. Complainant in a petition to the commission charged that the respondent did not afford it equal facilities, and in support of the charge averred that there had been a discrimination of rates and the withdrawal of a through tariff. *Held*, that both provisions of the statute were drawn in question by the petition and that the commission might properly make an order against the respondents' not discriminating in charges, as well as against their not affording equal facilities. *New York & N. Ry. Co.* v. *New York & N. E. Ry. Co.*, 50 Fed. Rep. 867 (N. Y.) C. Ct.

INTERSTATE COMMERCE — ORIGINAL PACKAGES — BREAKING OF PACKAGE. — Removing the lid of an original package of oleomargarine, so that a prospective buyer may examine its contents, is not such a breaking of the package, as will destroy its original character. *In re McAllister*, 51 Fed. Rep. 282 (Md.), C. Ct.

LANDLORD AND TENANT — OBSTRUCTION BY LANDLORD — EVICTION. — The lessor of a city lot erected a building on adjoining lot and deposited building material during three months on a cross-walk leading from in front of the leased premises to the opposite side of the street. *Held*, that the obstruction was an eviction of the defendant from a part of the leased premises, and the defendant, though he did not surrender possession, need not pay rent. *Edimison et al.* v. *Lowry*, 52 N. W. Rep. 583 (S. Dak.).

MASTER AND SERVANT — CONFIDENTIAL RELATION BETWEEN EMPLOYER AND EMPLOYEE — INJUNCTION. — Defendant was first an apprentice and then a paid clerk of the plaintiffs, a firm of engine makers. Two days before leaving the plaintiffs' employ, defendant compiled a table of dimensions of the various types of engines made by the plaintiffs, which dimensions the plaintiffs claimed to be trade secrets.

Held, that there was no obligation on the part of the plaintiffs to give the defendant, who occupied at the time simply the position of a clerk, this information, but that, on the contrary, there was a confidence arising out of the mere fact of the defendant's employment, "the confidence being shortly this, that a servant shall not use, except for the purposes of service, the opportunities which that service gives him of gaining information," which made it unlawful for the defendant to take advantage of his position to compile these tables for his own personal ends. Hence an *ad interim* injunction was granted as asked for, restraining the defendant from publishing or communicating the table or its contents to any person. *Merryweather* v. *Moors*, [1892] 2 Ch. 518 (Eng.).

MUNICIPAL CORPORATIONS — POWER TO TAX. — Art. 10, § 3, of State constitution provides that "all taxes shall be uniform," and that they shall be levied and collected "under such regulations as shall secure a just valuation of all property, real and personal." The city charter contained the power to tax street-cars by license to pay for cost of police supervision. *Held*, that the city could not tax the cars under the license, for purpose of municipal revenue. *Denver, etc. Ry. Co.* v. *City of Denver*, 30 Pac. Rep. 1048 (Col.).

NEGLIGENCE — LIABILITY FOR ESCAPE OF FIRE. — Plaintiff alleged that defendants negligently set fire to grass on their prairie-land and allowed the fire to escape, and that the plaintiff, to protect his property, set a back-fire, which, without his fault and because he was driven off by the heat from defendants' fire, escaped, and destroyed his property, which would have been destroyed by defendants' fire. *Held*, on demurrer, that plaintiff could recover. *McKenna* v. *Baessler*, 53 N. W. Rep. 103 (Iowa).

PARTNERSHIP, RIGHTS OF, TO INVENTION BY PARTNER. — By the articles of a copartnership for manufacturing, the partners agreed not to "exercise or follow the said trade, or any other, to their private benefit," but to use their best endeavors for their mutual advantage, and stipulated that the partnership property should go to the surviving partner. Part of the partnership property consisted of machinery to which improvements, invented by the partners, had from time to time been added, each partner having contributed some feature. *Held*, that on the death of one partner before letters patent were obtained, the invention passed to the survivor as partnership property, and not to the representative of the deceased partner. *Blood* v. *Ludlow Carbon Black Co.*, 24 Atl. Rep. 348 (Pa.).

REAL PROPERTY — ACCRETIONS — APPROPRIATION OF AN AEROLITE BY FINDER. — An aërolite weighing sixty-six pounds, which fell from the heavens and was found three feet below the surface of plaintiff's land, and dug up by a stranger, belongs to the owner of the land, as do other accretions and deposits from natural causes. As it was never lost or abandoned, *held* that the rules as to finders of lost goods did not apply. *Goodard* v. *Winchell*, 52 N. W. Rep. 1124 (Iowa).

REAL PROPERTY — CONDITION IN RESTRAINT OF MARRIAGE. — A testator devised his homestead to an unmarried daughter, "for and during her natural life, unless she

should be married, in which case her life estate shall cease." *Held*, that the daughter's right to the homestead given by the will ceased upon her marriage. The intention of the testator, gathered from the whole instrument, was not to promote celibacy, but to give the daughter the homestead until, by her marriage, another home should be provided. *Mann* v. *Jackson*, 24 Atl. Rep. 886 (Me.).

The early English rule against devises of real estate with conditions subsequent intended to operate in restraint of marriage was borrowed by the English ecclesiastical courts from the Roman civil law. The courts of equity, desiring to follow the plain intention of the testator, and yet unwilling to depart from the decision of the ecclesiastical courts, were led into a multitude of confusing distinctions as to whether the bequest amounted to a condition or only to a limitation. No general principle of classification can be found in the hundreds of conflicting cases, and courts have of late attempted to fall back upon the reason and good sense of the question. *Mann* v. *Jackson* will be welcomed as a step forward out of the difficulty. See 2 Redf. Wills * 290, § 20, and note; Id. 297; 2 Jarm. Wills, 569; *Stackpole* v. *Beaumont*, 3 Ves. 98, and the cases cited in *Mann* v. *Jackson*.

REAL PROPERTY — CONSTRUCTION OF DEED — BOUNDARY ON FRESH WATER LAKE. — In construing a deed purporting to pass land bounded "along" a fresh water lake covering forty-five acres: *Held*, (1) that under the common law of New York the soil under the pond belonged to the riparian proprietors; (2) that unless the contrary appeared, a deed of land adjoining would be presumed to convey the soil as far as the centre of the pond; (3) that the use of the word "along" was not sufficient evidence of such contrary intention. *Gouverneur* v. *Nat. Ice. Co.*, 31 N. E. Rep. 865 (N. Y.).

On the first point, the court disapprove of the dictum in 54 N. Y. 377, and follow 92 N. Y. 463, which appears on the whole to represent the modern tendency. See 140 U. S. 371. But this tendency is comparatively recent, and the greater number of jurisdictions are still probably adverse. See Angell on Watercourses, § 41, *seq.*; 12 Am. and Eng. Enc. of Law, 615, 642. On the second and third points, the Court assimilate the rule for ponds, in all respects, to that for running streams. *Sed quære*. There may be a certain argument, in the case of a stream, in favor of substituting for the boundary expressed, another line roughly parallel to it and not far distant. But it is going beyond the limits of possible *construction* to say that the expression "from point A three chains due south along the pond to point B," means the same as this: "From point A ¼ mile E. S. E. to the centre of the pond, thence ¼ mile W. S. W. to point B."

REAL PROPERTY — RULE IN SHELLEY'S CASE. — Lands were limited "to the use of E. and his assigns during his life without impeachment of waste," with an ultimate limitation to the use "of such person or persons as at the decease of the said E. shall be his heir or heirs at law, and of the heirs and assigns of such person or persons." *Held* (reversing the decision of Kekewich, J.), that the rule in *Shelley's Case* did not apply, but that the case came under *Archer's Case*, and that E took, not an estate in fee simple, but merely a life estate with a contingent remainder over. *Evans* v. *Evans*, [1892] 2 Ch. 173.

Archer's Case (1 Co. 66 b) must be regarded as a well-recognized exception to the rule in *Shelley's Case* (see discussion of *Shelley's Case* in 1 Hayes, Conv. 5th ed. 542–546). *Quære* whether any extension of the exception in *Archer's Case* will not lead to great confusion, and whether in jurisdictions where the rule in *Shelley's Case* is maintained at all, the exception in *Archer's Case* should not be confined to the exact words of that case.

REAL PROPERTY — STREET IMPROVEMENTS — ASSESSMENTS. — A city charter empowered the city to make street improvements, "provided the city council shall pay one third, and the owners of the property two-thirds, the cost thereof." A certain street having been paved, it is sought to enforce a lien for two-thirds the cost thereof, upon the abutting property; or, if that could not be done, to enforce a claim *in personam* against the owners of such property.

Held, 1. That no lien could be enforced in absence of provision in the statute. 2. That there was no personal obligation, as the charter failed to mention what persons should be charged, or to prescribe any rule by which they could be ascertained. *City of El Paso* v. *Mundy*, 20 S. W. Rep. 146 (Texas).

TORT — MALICIOUS INJURY — DAMAGE. — Defendant falsely published in his paper that plaintiff had gone out of business, and in consequence thereof there was a considerable falling off in plaintiff's business. *Held*, that no action of libel would lie against the defendant, as the words were not defamatory, but that this action could be supported as an action on the case for damage wilfully and intentionally done with-

out just occasion or excuse, analogous to an action for slander of title. To support such action actual damage must be shown; but proof that the publication had caused a general falling off of plaintiff's business, without showing the loss of any particular customers, was sufficient proof of such damage. *Ratcliffe* v. *Evans*, [1892] 2 Q. B. 524 (Eng.).

TORT — NOTICE OF CLAIM FOR INJURIES — DEFECTIVE HIGHWAY. — A statute required notice to be given to the city within a certain time after the injury alleged to have been caused by defective highways within the city. Plaintiff's notice described with particularity the place and manner of the accident, and stated that he had received "severe bodily injuries." *Held*, that it was not a sufficient notice to sustain an action. *Goodwin* v. *City of Gardiner*, 24 Atl. Rep. 846 (Me.).

In *Blackington* v. *Rockland*, 66 Me. 332, a statement that "my [plaintiff's] horse was injured, at a certain time and place," was held sufficient description of the nature of that plaintiff's injury. The court in *Goodwin's Case* distinguish the early decision in language which is, to say the least, ingenious; they say that "a man can usually tell his own personal sufferings more exactly than he can describe those of a horse. A man may be able to practice an imposition as to his own personal injury, but would find it difficult to do so in respect to an injury to his horse." It is submitted that this distinction is not well taken, and that there is no real difference between the two cases.

TORT — NUISANCE — LIABILITY OF LESSOR'S GRANTEE. — A let land to B, and afterwards granted the reversion to C. B, without violating his covenants, and while making a use contemplated in the lease, created a nuisance. *Held*, that as C had no power to prevent B's acts, he was not liable; and the fact that C received rent from B was immaterial. *Lufkin* v. *Zane*, 31 N. E. Rep. 757 (Mass.).

A landlord becomes liable for nuisance only if he sanctions the abuse; and since C had no power to abate this nuisance, his mere act of taking the premises could not make him a wrongdoer. The court criticises *Rex* v. *Pedley*, 1 Adol. & El. 822, and follows *Ahern* v. *Steele*, 115 N. Y. 203, a case decided by a bare majority.

TORT — TRESPASS — VENUE. — *Held*, in the Court of Appeal, Lord Esher dissenting: (1) That there is no reason founded on principle why an action relating to land in a foreign country should not lie by a plaintiff in England against a defendant in England, unless the action is of such a nature that it would be impossible for the court to give a judgment which could be enforced, as, *e. g.*, an action of ejectment.

(2) That the only obstacle to such actions heretofore has been the technical law of local venue.

(3) That, therefore, since the abolition of local venue by the Judicature Rules — Judicature Acts, 1873 (36 & 37 Vict. c. 66) and 1875 (38 & 39 Vict. c. 77), and Order 36, Rule 1 — the High Court has jurisdiction to entertain an action for damages in respect of trespass to land situate in a foreign country against a defendant who is within the jurisdiction of the court. *Companhia De Mocambique* v. *British So. Africa Co.* — *De Sousa* v. *Same*, [1892] 2 Q. B. 358 (Eng.).

This decision is in accordance with the view expressed by Chief Justice Marshall in *Livingston* v. *Jefferson*, 1 Brock, 203. See also Story on the Conflict of Laws, § 554.

TRUST, SPENDTHRIFT — WILLS. — *Held*, that a testator may so give to his son for life the annual income of a trust estate that the life tenant cannot alienate or his creditors reach it. *Roberts* v. *Stevens*, 24 Atl. Rep. 873 (Me.).

English courts are opposed to such restrictions as this, and hold that a creditor of a *cestui que trust* can reach in equity whatever the latter has the right to demand from his trustee. *Brandon* v. *Robinson*, 18 Ves. 429.

Decisions in several of our State courts are in accord with the English rule, but others, together with two of the Federal Supreme Court, uphold such trusts. See 96 Mo. 439; 91 U. S. 716, 727; 94 U. S. 523; 135 Pa. St. 586, 596; 133 Mass. 170 (see also 146 Mass. 369; 146 Mass. 395; and 149 Mass. 307); 69 Md. 77; 59 Vt. 530.

The Legislatures of four or five States sanction similar trusts by express statutes, though Kentucky by legislative enactment forbids them. 83 Ky. 306.

WILLS — POWERS. — In 1861 A made a will leaving all her estate to B. In 1867 a lot of land was conveyed to a trustee for the use of A for life, with power to dispose of it by her will. *Held*, that the power was executed by a will made previous to its creation. McIver, C. J., dissents. *Burkett* v. *Whittemore*, 15 S. E. Rep. 616 (So. Car.). This follows the settled English doctrine.

WILLS — INVALID PROBATE. — 1870 A, B, died, leaving a will, which was admitted to probate. Under it his widow took certain realty which she sold to T for value. 1880, one of A, B,'s children, who was a minor when the will was proved, petitioned to have

it set aside. This was decreed on ground that A, B, was *non compos mentis* when he executed the will. *Held*, that the proceedings under the original probate were not void, but voidable, since the court had jurisdiction, and therefore a purchaser from a devisee under the will would be protected. The court says that the case is like that of a man who buys from an executor whose appointment is revoked, where the purchaser gets a good title. *Thompson* v. *Samson*, 30 Pac. Rep. 980 (Cal.).

REVIEWS.

AN INTRODUCTION TO THE STUDY OF THE CONSTITUTION. By Morris M. Cohn, Attorney-at-Law. Baltimore: The Johns Hopkins Press, 1892.

That his book is of no use to the practising lawyer as such is almost admitted by the author. Its field is in the most general study of constitutional history, — "a study showing the play of physical and social factors in the creation of institutional law," as his sub-title puts it. Its use within this field is decidedly elementary. A fairly complete, though somewhat vague, summary of the author's theories on the general philosophy of political growth, getting what semblance of unity it has from the conclusion that our Constitution, like unwritten ones, is "amenable to the under-current of national life," makes up the treatise. It is, in short, an average essay of the kind naturally so popular, in which the names and general methods of science play a larger part than any actual useful research. The author gives his judgment on many ultimate laws of history, ethics, and sociology, but treats no subject in a manner thorough enough to aid a real student. N. H.

A TREATISE ON THE LAW OF EVIDENCE. By Simon Greenleaf, LL.D. In three volumes. Fifteenth edition, revised, with large additions, by Simon Greenleaf Croswell. Boston: Little, Brown, & Co., 1892.

The number of editions through which this work has run in the fifty years of its existence is a striking commentary on its importance. Despite the shortcomings which have been brought out by modern critical study, it is to this day a standard referred to more frequently and respectfully than any other book in its department of the law.

Mr. Croswell has added about nineteen hundred cases, mostly those decided since the last edition in 1883, and has summarized the advance of the law in several of the most important and most rapidly developing branches, by means of long and elaborate notes. So far the work is well done. The latest authorities, however, are not always given; but, as is stated in the preface, there are included "mainly such cases . . . as are deemed most important in principle or instructive as showing the tendency of the courts in new lines of decision." . . . However judicious this selection has been, it must somewhat lessen the utility of the work to a busy practitioner.

The added notes simply piece out the statements made originally by Mr. Greenleaf. They contain the recent cases, their results, and the reasons assigned by the courts, but their value would be greatly increased if Mr. Croswell had given his own conclusions in his own